IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4874 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHAKIL AHMED SUBHARTIKHAN MIR (MUSALMAN)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4874 of 2002

MR AR SHAIKH for Petitioner No. 1

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has

challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City dated 25.3.2002 in exercise of powers vested in him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been served with the grounds for detention along with the important vital documents. All the documents supplied to the petitioner has been produced by the petitioner and it reveals that the detaining authority while passing impugned order has branded the petitioner as a dangerous person having involved in communal riots flared up within the city of Ahmedabad after the Godhra incident on 28the February, 2002. The detaining authority for arriving at and recording the subjective satisfaction has considered the involvement of the petitioner in two different offences registered with the Dani Limda Police Station and Kagdapith Police Station on 13.3.2002 for the offences punishable under sec. 143, 147, 148, 149, 336, 337, 307 of IPC, under sec. 25(1)(b)(a) of Arms Act, sec. 3 and 7 of Explosive Act and sec. 135 of the Bombay POlice Act. The police has recovered muddamal including imflamables in both the incidents registered with the above police stations. The description of the incident is mentioned in the grounds for detention where a group of persons following Islam had assaulted the other group. It is also on record that some of the members of the other rival group also have been found involved inthe incident and it is told that they are being prosecuted for the offence registered with both the police stations. Ld. Counsel for the petitioner Mr. Prajapati by pointing out the time of the incident mentioned in the FIR registered with respective police stations and the topography of the area submitted that in reality there are no two incidents but one single incident. But as the entire area falls under two different police stations, both the police stations have registered the crime for the same incident. Ld. AGP Mr. Kogje on instructions received has accepted this contingency. In the incident registered with the Dani Limda POlice station, total 17 persons are named as accused and in the offence registered with Kagdapith Police Station, total 27 persons are named as accused persons. The present petitioner and his near relative cousin, who has also preferred a petition being SCA No. 4773 of 2002 and some other persons are shown as accused in both these crimes registered by the police. The detaining authority while recording the subjective satisfaction and exercising the powers vested under sec. 3 of the PASA Act has

considered the statements of some unnamed witnesses and ultimately the impugned order of detention dated 25.3.2002 came to be passed and the petitioner has been detained.

The legality and validity of the order of detention has been challenged by the petitioner on number of grounds, but the ld. counsel for the petitioner has mainly restricted his submissions on the ground that the detaining authority ought not to have branded the petitioner as dangerous person on account of solitary event occurred on that unfortunate day i.e. 17.3.2002. It was a group clash and the result of mob psychology. The petitioner was, on the contrary, a victim of the situation where two different rival groups were pelting stones etc. against each other. Innocent police personnels had also sustained injuries. For the sake of argument, it is accepted that the petitioner was present and even was found active than also on the strength of this solitary incident, impugned order of detention could not have been passed. Even if passed could not have been confined beyond the date of representation. Revocation must follow in such cases by opting other less drastic measures.

While enlarging the arguments on the point of "an act prejudicial to the law and order and an act prejudicial to the public order", Mr. Prajapati has submitted that this particular alleged wrong should not be treated an activity prejudicial to the maintenance of public order. Of course, when the incident had occurred, it must have been affected adversely to even tempo of life in that area, and the efforts to achieve normalcy inthe affected area but at least on the date of detention i.e. 25.3.2002, the situation was very much under control and there was no need to exercise the powers under sec. 3 of the PASA Act.

Mr. Kogje learned AGP has pointed out that in one of the decision, the Apex Court has said that to inflict a knife injury is a criminal wrong but in a communal disturbance, stabbing a person may result into disrruption in the normalcy and the same may give further rise in flaring the communal conflict. So, the authority while passing the order was justified and the subjective satisfaction recorded by the authority is appropriate and in accordance with the provisions of the PASA Act. Mr. Kogje referred the relevant provisions of sub sec. 4 of sec. 3 of the PASA Act in reference to sec. 2(c) of the PASA Act.

The say of Mr. Prajapati if evaluated in the correct perspective, the detaining authority ought to have considered the representation made by the petitioner. When the petitioner has prayed for revocation of the order of detention, than the authority is supposed to consider the representation in totality of facts and circumstances of the case. The wife of the petitioner had initially applied for revocation of the order by making a written representation on 4.4.2002 but the same was rejected by the State Government on 12.4.2002. The petitioner again applied for revocation of the order of detention through his counsel on 26.4.2002 to the detaining authority, but the same was also not accepted and the petitioner was intimated that his representation has been rejected on 23.5.2002. Thus the intimation was sent to the petitioner on 24.5.2002 and it was received by the petitioner on 30.5.2002. The second representation has not been dealt with promptly. Re-evaluation of situation and scope of revocation has not been considered. This failure become relevant.

The competent court has granted bail to the petitioner. This court while dealing with the SCA No. 5177 of 2002 has considered certain aspects and it would be appropriate to make reference of relevant part of the observations made by this court in the decision dated 23.7.2002, wherein the court has observed that:

"It is rightly argued that the detaining authority ought to have recorded satisfaction that the petitioner requires to be detained and his free movement may prejudice or disrupt the "public order". It is true that for a single offence or a dangerous act, a person can be detained. However, it is obligatory on the part of the detaining authority to get satisfied that unless the detention order is not passed, detenu would indulge in similar type of dangerous activities which would disrupt the 'public order'. It is submitted by ld. counsel for the petitioner that after appreciating the papers of the police case, prima facie, registered against the petitioner, the competent court has granted bail to the petitioner. When Criminal Court has accepted that discretion requires to be exercised and petitioner should be granted bail, then it would not be otherwise justified or proper to keep the petitioner in prison under the detention detention laws unless it is satisfactorily

accepted that but for the preventive detention, he/she would continue to indulge in similar activities prejudicial to the "public order". Gravity of the offence as well as development of normalcy in the area where alleged incident had occurred, are both relevant facts. it is rightly submitted that this is the case wherein State of Gujarat should have revoked the order of detention after lapse of certain period from the alleged sole incident. For short, the continued detention of the petitioner in reference to the above set of facts, is bad and illegal and so on both these counts, the continued detention of the detenu requires to be held as bad-in-law and illegal."

Ld. AGP Mr. AY Kogje while resisting the petition, has submitted that in view of the ratio of the decision of this court in the case of Smt. Rohanbibi Mahommandkhan Pathan vs. Sate of Gujarat, 1990(2) GLH p. 1, the order of the detention should be held valid. In the cited decision, the petitioner lady was found involved in the activities of bootlegging and she had challenged the legality and validity of the order of detention. Reliance is placed on the observations made by the Division Bench in para-16 of the decision wherein the Court has held that the subjective satisfaction arrived at by the detaining authority under Section 3 and under Section 9(2) of the PASA Act, requires to be appreciated on factual matrix of each case. In the cited decision, names of witnesses were not disclosed due to possibility of flaming up of communal riots. Satisfaction recorded by the authority and the reasons assigned for recording the subjective satisfaction was found valid. This decision would not help the State in any manner because the same is based on totally different set of facts.

The second decision relied on by the ld. AGP Mr. Kogje is in the case of Indersing Shaikh vs. State of Gujarat, 1993(2) GCD 842 (Guj.). In the cited case, the detenu was found involved in the offence punishable under the Arms Act and said to have been indulged in violent activities constituting disturbance to the 'public order'. The petitioner detenu was found involved in 9 different cases as well as 4 different un-named persons have given their statements describing the activities of the petitioner and the detaining authority satisfied that the petitioner is a 'dangerous person'. Observations of this court in reference to the arguments advanced by the

ld. counsel appearing in the matter in para-9 of the cited decision, has been read over to the Court, wherein the court has held that there are various categories of anti-social elements described in Section 3 of the PASA Act viz. dangerous person, bootlegger, persons indulged in immoral traffic and property grabbers and on facts, the Court found that petitioner Indersingh is a 'dangerous person'. While in the present case, the petitioner is found involved in criminal case of communal violence and has no other criminal antecedents. So, this decision also would not help the respondent.

In view of the two different representations made by the wife of the petitioner and the petitioner himself through his counsel there was an opportunity for the detaining authority to revoke the order of detention especially when it is claimed that there is normalcy in the city and the continued detention of the petitioner is not warranted. Otherwise, reasons could have been assigned justifying continuation of detention. It is time and again said in more than one decision by the Apex Court that it is the duty of the detaining authority to consider the aspect of the revocation of the order of detention if prayed or in a changed circumstances. The petitioner has voluntarily declared before this court, by filing a written undertaking and the ld. counsel for the petitioner has also made a statement before the Court that in the interest of smooth administration of the area by the police machinery, he shall not enter the area falling under the Dani Limda Police Station and Kagdapith Police station for a period of two months. Normally, while dealing with the petitions filed seeking relief of quashing of order of detention and when the writ of habeas corpus is sought for, the Court itself, unless in exceptional circumstances, should not imposed any such restrictive conditions, but when the petitioner himself has voluntarily filed an undertaking to the effect that he shall not enter the area of Dani Limda Police Station and Kagdapith Police Station for a period of two months, than with a view to do substantive justice, the undertaking filed by the detenu can be accepted. So, the same is accepted accordingly. The petitioner now shall be bound by the undertaking filed by him only with a view to help the police machinery in the area of both these police stations. It is clarified that the continued detention is required to be quashed on its own merits and not on account of this undertaking filed by the petitioner. On such an undertaking, the order of detention cannot be quashed or the continued detention cannot be turned down. So, in the changed circumstances, the Court feels that this petition should be allowed.

The fact of filing of the undertaking and imposition of restriction on the movement of the petitioner invited by the petitioner, in any way should not be treated as precedent and neither party before the Court in any other such or similar petition shall be entitled to take the advantage and disadvantage of this finding/conclusion.

In the result, this petition is allowed to the extent that continued detention of the detenu pursuant to the impugned order of detention dated 25.3.2002 passed by the Police Commissioner, Ahmedabad City, against the detenu is hereby held to be illegal and bad in law and detenu is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute accordingly. DS permtted.

(C.K. BUCH, J.)

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